

in any way at all it would be on a reciprocal basis and if we could be assured that we would receive permission if we wished to open a commercial agency in Leningrad or Vladivostock, for example. It was left there for some time.

We had given considerable thought to this matter of reciprocal agreements, and I expect that they might have been turned down, but we never presented any further proposals to them. The last I heard of it from the Soviet side was one day when Mr. Zaroubin was leaving Ottawa to return to Moscow on what he described as a brief visit for consultation. I think this was early in December. He paid a farewell call on Mr. Robertson and myself and mentioned his desire to receive an answer as to what we were ready to agree to so that he would, when he was in Moscow, be able to make arrangements with the Commissar of Foreign Trade.

Q. That was December, 1945?

A. I am afraid I have not the exact date here.

Q. Mr. Zaroubin has not yet returned?

A. Mr. Zaroubin has not yet returned.

Q. In connection with this suggestion of Zaroubin and Krotov for a trade body in Montreal or Toronto which was not going to buy or sell; not having much imagination about these things, what could it do? What was the suggestion?

A. That, Mr. Commissioner, was what was rather puzzling me. I found I was in error in saying we had no written communications with the Soviet Ambassador. I saw him some time early in October, October 26th, and during a talk on another matter he pressed me for an answer. I said, "Please let us have your detailed plans in writing on this point because otherwise we cannot consider them fairly in consultation with other Departments of Government, as to what reply we should give." I had an answer on November 13, 1945, which contains this paragraph:—

The principal functions of the trade representatives of the U.S.S.R. in the countries in which they exist are, briefly, as follows:—

(1) To represent the interests of the U.S.S.R. in respect of foreign trade and to facilitate and encourage

the development of trade and other economic relations between the U.S.S.R. and a respective country;

(2) To control and regulate foreign trade of the U.S.S.R. with a respective country;

(3) To effect the transactions in foreign trade on the basis of state monopoly of foreign trade.

... not very informative.

During the war because of the different processes of manufacture at many different points in Canada for the U.S.S.R. they were under some necessity of having people visit factories to discuss specifications and so on with manufacturers. We certainly did not prevent that; we rather encouraged them to do that at times, and we were contemplating that there would be a continuation of this manufacturing account with the U.S.S.R. after the war. However, this would be on a commercial basis in which the Soviet Government would be dealing directly with the Canadian manufacturer concerned and would not justify, therefore, the creation of a Mission with full diplomatic privileges and immunities, although it might justify the creation of some representation in various centres of industry in Canada.

The extent of the ramifications of the espionage organization and the identity of all its agents was not known on February 14th. There were a number of agents designated in the Embassy records by cover names only whom Gouzenko could not identify. The provisions of the Order in Council being preventive, it was of the utmost importance that the identity of as many agents as possible should be discovered together with the method by which each functioned. Detention of those under suspicion would not only prevent further communication by them if it turned out that they were in fact agents, but there was every reasonable expectation that their evidence would lead to other discoveries. We felt that the exercise by the Minister of the power conferred upon him by Order in Council P.C. 6444 would have much more chance of effectuating the preventive intent of that Order and of the Statute by the discovery of the full ramifications of the espionage organization, than failure to exercise it, the result of which would be to leave to these persons the fullest opportunity, once one of them had been called to testify before us, to collaborate with each other and to receive

"instructions" from those directing their organization as to what they should or should not reveal.

If they had been left free to do this it would have hampered the work of this Commission, if it did not render it at least partly ineffective. Ascertaining the scope and determining the organization of the Fifth Column and the various spy rings and identifying the Canadians who were already at work as agents, or who were being drawn into the net would enable an immediate stop to be put to the subversive activities, would prevent many others from being corrupted, at the same time exonerating those who had been placed under suspicion but who in fact were innocent. Failure to prevent such collaboration would also disclose the information in the possession of the Commission and particularly the nature of the documents Gouzenko had brought with him. The lengths to which the Russians were prepared to go to recover these documents or to ascertain what he actually had in his possession reveals the importance they attached to this information. In fact even under the procedure adopted it will be seen that the agents were able to arrange for the destruction of material evidence, to prevent the return to Canada of at least one material witness, and to cause at least one material witness in Canada to disappear. We have found one case where an agent was warned by a telegram which while innocent on its face was in fact a code warning. This, fortunately, came too late to be of use to him.

It is merely to state cold fact to say that if the documents brought by Gouzenko on the 14th of February were found to be authentic, there had been laid bare before us, not just the case of a foreign agent having broken into a government department and committed theft, but a malignant growth, the full penetration of which we did not know, but which was alive and expanding, working in secret below ground, directed against the safety and interests of Canada by a foreign power and made up of Canadian citizens who, while giving lip allegiance to this country and the oaths of allegiance and secrecy they had taken, were in truth and in deed solely devoted to that foreign power, believing it to be the supreme exponent of ideas to which they had given themselves as much as if they were its citizens, and not citizens of this country. We have found Gouzenko's evidence to be reliable wherever it relates to the various Russian organizations and the operations directed by Sokolov and Zabotin, and it is verified by other independent evidence to a remarkable degree. On the 14th of February we had before us his written statement in which he said:—

Having imposed its communist regime on the people, the Government of the Soviet Union asserts that the Russian people have, as it were, their own particular understanding of freedom and democracy, different from that which prevails among the peoples of the western democracies. This is a lie. The Russian people have the same understanding of freedom as all the peoples of the world. However, the Russian people cannot realize their dream of freedom and a democratic government on account of cruel terror and persecution.

Holding forth at international conferences with voluble statements about peace and security, the Soviet Government is simultaneously preparing secretly for the third world war. To meet this war the Soviet government is creating in democratic countries, including Canada, a fifth column, in the organization of which even diplomatic representatives of the Soviet government take part.

The announcement of the dissolution of the Comintern, was, probably, the greatest farce of the Communists in recent years. Only the name was liquidated, with the object of reassuring public opinion in the democratic countries. Actually the Comintern exists and continues its work, because the Soviet leaders have never relinquished the idea of establishing a Communist dictatorship throughout the world.

Taking into account least of all that this adventurous idea will cost millions of Russian lives, the Communists are engendering hatred in the Russian people towards everything foreign.

† To many Soviet people here and abroad it is clear that the Communist party in democratic countries has changed long ago from a political party into a fifth column in these countries to meet a war, into an instrument in the hands of the Soviet government for creating artificial unrest, provocation, etc., etc.

Through numerous party agitators the Soviet government stirs up the Russian people in every possible way against the peoples of the democratic countries, preparing the ground for the third world war.

*Underlined in original written statement by Gouzenko.

†Our underlines.

During my residence in Canada I have seen how the Canadian people and their government, sincerely wishing to help the Soviet people, sent supplies to the Soviet Union, collected money for the welfare of the Russian people, sacrificing the lives of their sons in the delivery of these supplies across the ocean—and instead of gratitude for the help rendered, the Soviet government is developing espionage activity in Canada, preparing to deliver a stab in the back of Canada—all this without the knowledge of the Russian people.

We also knew at that time what Gouzenko had said to the officers to whom he first told his story. One of these officers related Gouzenko's first statements as follows:—

“‘Why should Russia now be preparing for a third world war?’ He said, ‘Well, there is one great enemy to defeat, and that is capitalism’, and everything in the Soviet Union, at least what the regime is doing now, is designed for that purpose.

“He insisted that the abolition of the Comintern was a farce, that in reality the Comintern continues to function, not in the old form but in a new and possibly slightly camouflaged form.

“In relating certain things he stated that the people at the Embassy if they are really asked and are in a position to express a true opinion, those that are not really tied in with the communist ideology, fear another world war and those who are really members of the Communist Party and subsidiary organizations, they think that that is part of the process leading toward a general upheaving throughout the world resulting in the establishment of communism the world over.”

We might mention here that Gouzenko elaborated before us at a later date on his earlier evidence, but without changing its substance. He deposed as follows:—

“Then take the situation in Russia. There is a preparation for war there. They are educating the people. They are telling the people that everything that is outside the borders of Russia is an enemy. Even during the most dangerous moments during the last war they told the people that even though the allies were fighting at their side, they might still be enemies.

"There was one last conversation that Colonel Zabotin had with us. This was before the 5th of September. He gathered us in this room at 14 Range Road and said, 'Yesterday they were allies, today they are neighbours, tomorrow they will be our enemies.' In Russia there is a great deal of propaganda carried on by conversation of the propagandists and sometimes even in the press. It is all done to train the people to think that they must fight another war, that maybe it will be our final war."

"Decoding these telegrams I involuntarily know these facts of the secret side of the policy of the Soviet government. The Russian people, thanks to the enforcement of the Soviet government, is isolated from life in the democratic countries. They do not know the reality beyond the bounds of the Soviet Union border. They are imbued with the idea that the people in democratic countries live in some kind of chaos. Prior to the war the word 'democracy' even had a bad meaning. If you were to call a man in Russia a democrat he will be offended.

"The Russian people are being brought up in the single-minded idea that the system existing in Russia is the only system having a future; the systems of the democratic countries, in accordance with this teaching, are doomed to defeat and will be destroyed by force and replaced by communism."

We believe Gouzenko reported what he heard at the Ottawa Embassy honestly and accurately, but we have no way of knowing to what extent these views are held by Russians other than those in the Embassy who expressed them. In so far as the opinions expressed by him are concerned we are impressed by his sincerity, and conscious of the opportunities he had to be well informed whereof he spoke. Whether the international situation at that time (or since) makes the accuracy of his opinions more or less probable, is not the point. We felt on the 14th of February we could not take the responsibility of ignoring this evidence. It may be that others, called upon at that time to exercise their judgment in the circumstances presented to us, might have felt differently — such was not our judgment.

In a book, published in 1945, Alexander Barmine, a member of the Soviet Diplomatic Service up until 1937, thus expresses his judgment with regard to purpose of the kind of activities reviewed in this report. At page 319 he says:—

"All this does not mean that Stalin has withdrawn his support from the so-called 'communists' who are manoeuvring for power in other countries. If he wanted to do that, he need only speak in the right quarters a single word. But it does mean, in my opinion, that he is using their manoeuvres only to weaken these countries and enhance his own and Russia's power. He will extend his totalitarian caste system to as many other countries as he can, and it is fantastic to pretend that he is 'fostering democracy' or 'going back toward capitalism' in Russia or anywhere else. He cannot do that without weakening his own position. His instinctive drive is toward power, and he will defend Russia's power in the world by undermining the democracies, just as he defended his own power within Russia by killing all those who began to see that democracy was the true solution of her problems."

(From the book *One Who Survived*)

We quote this without comment.

Accordingly, with our concurrence, counsel wrote to the Minister of Justice as follows:—

Ottawa, February 14th, 1946.

Dear Sir:

Re: Royal Commission—P.C. 411

By reason of the nature of the evidence already submitted to the Royal Commission, the undersigned counsel to the Commission have recommended to the Commissioners that you should be requested to exercise the powers conferred upon you by P.C. 6444, 6th October, 1945, and to issue Orders for interrogation and, for that purpose, detention of the following persons:

Isidore Halperin	Raymond Boyer
David Shugar	James Scotland Benning
M. S. Nightingale	H. S. Gerson
F. W. Poland	Eric Adams
Ned Mazerall	Emma Woikin
Durnford Smith	Gordon Lunan

The reasons which impel the Commissioners to accept our advice as above is the extremely serious nature of the disclosures so far made and indicated by the evidence, the fact that cover names of persons

who have not so far been identified also appear in the evidence and indicate that the full extent of the ramifications of the disloyal practices and the persons engaged therein may be even greater than is already known and may be continuing; in effect the matter appears to be so serious from the national standpoint that the Commissioners believe that the course we advise should be pursued in these exceptional circumstances.

Yours sincerely,

(Sgd.) E. K. Williams,
Gerald Fauteux,
D. W. Mundell.

The Rt. Hon. Louis St. Laurent,
Minister of Justice,
Ottawa.

With regard to the expectation that the exercise by the Minister of his authority under Order in Council P.C. 6444 would lead to the discovery of others concerned in these activities, we are able to say that this has been the result. For reasons which will appear such a result may have been attained to a much greater degree than can be demonstrated.

In the first place, Lunan, when he appeared before us, gave his evidence, we think, pretty fully, making allowance for the natural reluctance which we have no doubt he felt in describing what he had done, to say nothing of his reluctance to speak of what he knew of the actions of others. When later at large he had the opportunity of discussing matters with others and of receiving instructions from others, he fell mute when called as a witness in the proceedings instituted against Fred Rose and Mazerall.

Adams, Gerson, and Nightingale also, who had given evidence before us, refused to testify when called by the Crown as witnesses at the trial of Fred Rose. Woikin, in the course of her evidence at the same trial, took a somewhat similar attitude and was designated a hostile witness by the Court.

Further, the typewriter which Lunan had used to type his reports to Rogov and which he had taken with him to England where he was until shortly preceding his detention, was found in his father's home in the United Kingdom by members of Scotland Yard, who entered on a search warrant issued under the *British Official Secrets Act*, broken up into pieces, the result of which, as he no doubt intended, would render it difficult, if

not impossible, to prove if he remained mute, that he was the author of the reports. We think it very likely that the evidence he gave before us touching himself, Halperin, Mazerall and Smith, would not have been available had Order in Council P.C. 6444 not been acted upon with regard to him. Whether that would have been a desirable result, having regard to the provisions of *The Official Secrets Act*, 1939, to which we have referred, admits of no answer other than a negative.

It is perhaps merely a matter of comment in this context for us to say that, from the position we have occupied enabling us to observe the persons who were detained as they gave evidence before us, opportunity to deliver such confidential information as they were able from time to time to obtain, was the only conditioning fact for its actual delivery. Veall was especially frank:—

Q. Let us be perfectly clear. You say with the exception of the last — I think you said the last six or twelve months:

A. Yes.

Q. If somebody had asked you for secret information that you would have given it notwithstanding any acknowledgment or understanding there was between you and your employer, the British Government?

A. Yes.

The evidence also contains instances of where the decision to enter upon the work of espionage was not made except upon reflection. All such persons needed for action was opportunity.

We are satisfied that Freda Linton would not have been the only witness who disappeared, with the consequent loss of testimony, had not Order in Council P.C. 6444 been acted upon. Freda Linton appeared on the Embassy records only as *Freda* and Gouzenko could give her no other name nor could he identify her in any other way. The evidence of Nightingale, however, identified *Freda* as Freda Linton and Gouzenko subsequently identified her photograph as that of a woman he met at Sokolov's. We are confirmed in our view as above by the fact that if Sam Carr ever returned to Canada from the trip he made to the United States and Cuba on January 15th he also disappeared, and he cannot be found although his evidence was sought by the Commission. It is doubtful if the provisions of Order in Council P.C. 6444 extended to Carr so as to permit his detention as he is not within the class of "public officials and other persons in positions of trust". In any event he was not, so far as can be ascertained, in Canada on February 14th, 1946. The existence of Agatha Chapman, to whose activities we attach a great deal of importance, was

disclosed for the first time by Willsher. Frank Chubb is the "*Chub*" named in the Embassy records. Gouzenko could not identify him but Boyer did so and he has appeared before the Commission. Further, large numbers of important documents were found in the possession of important witnesses which would never have been available to the Commission if the powers given by section 4 of Order in Council P.C. 6444 had not been exercised. These documents furnished a great deal of valuable information.

From our observation of and experience with the persons engaged in these espionage activities who appeared before us as witnesses, it became apparent to us that they had been purposefully educated to a condition of mind in which they regarded obedience to the rules of Communist bodies as their highest duty and that, if their immediate objects could be advanced or protected by mendacity or concealment, including refusal to testify at all, they were quite prepared for such a course and recognized it as a requirement expected of them. Halperin, at an early stage of his examination, refused to testify further, notwithstanding the provisions of *The Inquiries Act*, which required him to do so, and notwithstanding the advice of his own counsel as to his obligation to testify. Upon his refusal to accept his Counsel's advice, that Counsel therefore withdrew. Again, Poland refused to be sworn, or to testify at all.

There were mentioned in the Embassy records brought by Gouzenko a number of other names of persons, both cover-names and real names, whom Gouzenko did not know. The identity of some of these, and others, has, however, as a result of the testimony given, now been ascertained. However, there are some seven agents designated by what appear to be cover-names who were, according to the records, working in Canada, and a number employed outside of Canada, whose identity we have not been able to discover.

There is also this further consideration to be kept in mind. As we have indicated in this Report, motivation for espionage was the result of careful and widespread preparation in secret study groups. Many more persons in the public service were being conditioned along these lines than were as yet actively participating in espionage. To obtain the evidence of those who had actually participated, independent of any consultation between them and free from "instructions" by others, seemed most likely to secure the disclosure of the names of a considerable number of members of these secret groups in the public service being "developed" for future use. It is to be remembered, as the documents show, that the agency organization was designed for expansion and for even greater use in the future.

We think it unnecessary to mention in this Report the names of such persons. Many, we have no doubt, would be unaware of the real object for which they were being "developed". The names, however, in so far as such persons have been identified, appear in evidence, and the situation may be reviewed by the proper authorities.

On February 14th, also we were apprised of the contents of the following letter written by the High Commissioner for the United Kingdom in Canada to the Minister of Justice. The letter itself was subsequently placed in evidence. It reads:—

**OFFICE OF THE HIGH COMMISSIONER FOR THE
UNITED KINGDOM**

SECRET

Ottawa, 14th February, 1946.

Sir,

In connection with an enquiry which is in progress by a Royal Commission, I understand that it has been decided to detain for interrogation a number of persons in Canadian Government employment. I am authorized by the United Kingdom authorities to request that, in view of evidence that a member of the staff of my Office may be involved in the particular activities which the Commission is investigating, she also should be detained for interrogation. Her name is Miss K. M. Willsher and her address is known to the appropriate Canadian authorities.

I therefore wish to request that, if the Canadian authorities are agreeable to this course, you will be good enough to have arrangements made according for her interrogation and detention for that purpose.

Yours sincerely,

(Sgd.) Malcolm MacDonald

**Rt. Hon. L. S. St. Laurent,
Minister of Justice,
Ottawa.**

In terminating our comments with respect to our concurrence in counsel's advice with respect to the exercise by the Minister of the authority conferred upon him by Order in Council P.C. 6444, it remains only to point out that by the express provisions of that Order the persons detained under those provisions were to be detained "in such place and under such conditions" as should from time to time be determined by the Minister.

The interrogation of which the Order speaks is not the examination conducted before us pursuant to Section 4 of *The Inquiries Act*. We had no jurisdiction with regard to such interrogation, and the transcription of whatever interrogation took place under the provisions of the Order was not made available to us, nor was it referred to by Counsel, except that in a very few instances in connection with certain points which arose, the witness was referred to statements made by the witness during interrogation under Order in Council P.C. 6444.

We may mention that none of the witnesses who had been detained under Order in Council P.C. 6444 made or suggested any complaint to us about their interrogation, the methods of their interrogation, the living conditions in their places of detention, or their treatment by their custodians, the Royal Canadian Mounted Police.

2. Order in Council P.C. 411

Dealing now with Order in Council P.C. 411, the law governing the discharge of our duty under it is laid down by *The Inquiries Act*, R.S.C. 1927, c. 99, pursuant to which we were appointed, and by the express terms of Order in Council P.C. 411 itself. We should say something with respect to these provisions and their application to the Inquiry.

Before referring to the provisions of the law in detail, it should be pointed out that a Commission under *The Inquiries Act* is, as provided by Section 2 of that statute, appointed for the purpose of making an inquiry whenever the Governor in Council deems it expedient to cause an inquiry to be made "into and concerning any matter connected with the good government of Canada or the conduct of any part of the public business thereof".

The position of persons summoned to give evidence before the Commission is governed by Sections 4 and 5. They are as follows:—

4. The commissioners shall have the power of summoning before them any witnesses, and of requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters, and orally or in writing, and to produce such documents and things as the commissioners deem requisite to the full investigation of the matters into which they are appointed to examine.

5. The commissioners shall have the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases.

In view of this statutory obligation to speak, any idea that all persons whose conduct is being investigated before a Commission under the Statute should be cautioned before being required to give evidence, is based on a misconception. Of course, the ordinary warning that a person is not obliged to speak, but that if he does, anything that he might say may be used at his trial, must at common law be given to a person who is accused, or to a person who is so strongly suspected of having committed a crime that it is the intention of the authorities to prosecute him before the Criminal Courts (*Gach v. The King*, 1943, S.C.R. 250), which have the power to punish for the crime: a power which a Commission does not possess.

This rule of law is based on the sound principle that confessions must be free from fear and not inspired by hope of advantage which a person may expect from a person in authority, but it finds its application only when the person about to be interrogated is free to remain silent and is not under the compulsion of law to speak. It does not and cannot be applied to a person who is under the compulsion of a statute to reveal to a Commission or other body the existence of facts of which he is aware. *The King v. Walker*, 1939 S.C.R. 214; *Reg. v. Coote*, L.R. 4 Privy Council 599.

Under *The Inquiries Act*, Commissioners are given power by the sections above quoted to compel a witness to speak, and to impose sanctions in case of a refusal. It would be a mockery of the law, and a derisive pronouncement, to hold that a witness must be given the warning "that he is not obliged to speak . . ." and yet that he should be liable to imprisonment if he did not comply with the compulsory sections of the Act, which provide that he is liable to imprisonment if he refuses to take the oath and answer the questions put to him. In not warning the witnesses, we have followed the only legal course open to us.

It will be convenient here to deal with a slightly different point, namely, whether any duty rested upon us as Commissioners to advise witnesses that they might, if they desired, avail themselves of the provisions of Section 5 of *The Canada Evidence Act*, Revised Statutes of Canada, 1927, cap. 59. It will be sufficient to refer, in this connection to the judgment of the Privy Council in *Regina v. Coote*, L.R. already referred to above. Sir Robert Collier at p. 607 said:—

"The Chief Justice indeed suggests, that Coote may have been ignorant of the law enabling him to decline to answer criminating questions, and that if he had been acquainted with it he might have withheld some of the answers which he gave. As a matter of fact, it would appear that Coote was acquainted with so much of the law; but be this as it may, it is obvious, that to institute an inquiry in each case as to the extent of the Prisoner's knowledge of law, and to speculate whether, if he had known more, he would or would not have refused to answer certain questions, would be to involve a plain rule in endless confusion. Their Lordships see no reason to introduce, with reference to this subject, an exception to the rule, recognized as essential to the administration of the Criminal Law, "*Ignorantia juris non excusat*." With respect to the objection, that Coote when a Witness should have been cautioned in the manner in which it is directed by Statute, that persons accused before Magistrates are to be cautioned (a question said by Mr. Justice Badgley not to have been reserved, but which is treated as reserved by the Court), it is enough to say, that the caution is by the terms of the Statutes applicable to accused persons only, and has no application whatever to Witnesses."

We may point out, that in more than one case, where witnesses were represented by counsel from the outset of their appearance before us, they gave their evidence without any appeal to the Canada Evidence Act. Be that as it may, no duty with respect to the matter rested upon us. The privilege given by the Statute, to a witness who wishes to claim it, is said by Phipson in his leading work on Evidence, 7th Edn. at page 206, to be "*based on the policy of encouraging persons to come forward with evidence . . .*" The author does not say that it is aimed against self-incrimination. We feel it is too often lost sight of that the law is not designed to handicap society in its endeavour to protect itself against those of its members who commit offences against it, nor to give advantage to such persons. The language of Riddell J., in the case referred to below, *Rex v. Barnes*, at page 390, may be studied with profit:—

"Much has been said as to the alleged hardship upon Barnes in being compelled to give evidence — it is, however, to be hoped that we have not arrived at the point that one accused of crime has so many and so high rights that the people have none. The administration of our law is not a game in which the cleverer and

more astute is to win, but a serious proceeding by a people in earnest to discover the actual facts for the sake of public safety and the interest of the public generally. It is the duty of every citizen to tell all he knows for the sake of the people at large, their interest and security, and I am not inclined to stretch in any way rules which permit any one to escape from the duties which all others admit and perform — it is for Parliament to frame rules and exceptions, not for the Court."

The possibility that some charge may be laid in the courts against any person required to attend and testify pursuant to *The Inquiries Act*, or the fact that such a charge has already been laid at the time any person has been required to attend for the purpose of testifying, does not affect the position of such person under the law, or create any immunity from testifying. The point is illustrated by the decision of the Appellate Division of the Supreme Court of Ontario in *Rex v. Barnes*, 49 O.L.R. 374. In that case the obligation of Barnes to testify in the proceedings there in question arose under an Ontario statute in somewhat the same terms as Section 5 of *The Inquiries Act*, namely, R.S.O., 1914, cap. 92, sec. 35, which provided that:—

in addition to any other powers which he may possess, a coroner shall have the same power to issue summonses to witnesses, Form 8, to enforce their attendance and to punish for non-attendance or refusing to give evidence as is possessed by the Supreme Court.

The language of the late Mr. Justice Riddell at p. 390 *mutatis mutandis*, applies:—

The fact, then, that it is possible, probable or certain that one has caused the death of another does not take away his right to give evidence of the facts before the coroner, and at the Common Law the right and duty to give evidence are correlative. If one who had the right to give evidence should for any reason refuse, he could be compelled.

Had Barnes been in fact arrested and detained under the warrant of the coroner there in question, the same principle applied. The Court refused to set aside the warrant or prohibit its enforcement against Barnes, who at the time was evading arrest.

With respect to the representation of persons called to give evidence before a Royal Commission the English law is stated in Halsbury's Laws of England, 2nd Edition, Vol.2,p.501, as follows:—

Sub-Section 5—Non-Judicial Proceedings.

679. There are some proceedings, such as inquiries by Royal Commissioners, etc., where there may be no right for any one to appear except persons summoned, and where, therefore, counsel have no right to appear. But at such inquiries counsel, by leave of the commissioners, are often present, and examine and cross-examine witnesses. Tribunals of inquiry to which the Tribunals of Inquiry (Evidence) Act, 1921, has been applied, have power to authorize the representation before them of any person appearing to them to be interested by counsel or solicitor or otherwise, or to refuse to allow such representation.

The English statute referred to in the above text, namely, *The Tribunals of Inquiry Act*, 1921, 11 Geo. V., cap. 7, provides by Section 2 (b) that the Tribunal:—

shall have power to authorize the representation before them of any person appearing to them to be interested to be by counsel or solicitor or otherwise, or to refuse to allow such representation.

It is of interest to observe that under the common law also, a person in the position of Barnes in the case above referred to, although committed for trial on a charge of manslaughter has no right to be represented by Counsel in the coroner's court investigating the death of the person whose death was the subject of the charge against Barnes. This was decided in Ontario as long ago as *Agnew v. Stewart*, 21 U.C.Q.B. 396.

The position at law, apart from statute being as above stated, *The Inquiries Act*, contains an express enactment on the subject by which the Commissioners have a discretion to allow any person whose "conduct is being investigated" to be represented by Counsel before them. It is only "if any charge" is made against any person in the course of such investigation that such person is then entitled to Counsel if he so requests.

Further, the statute provides that the Commissioners shall not report against any person until reasonable notice shall have been given to him of the charge of misconduct alleged against him and he shall have been allowed full opportunity to be heard in person "or" by counsel. These provisions, found in sections 12 and 13, are as follows:—

12. The commissioners may allow any person whose conduct is being investigated under this Act, and shall allow any person against whom any charge is made in the course of such investigation, to be represented by counsel.

13. No report shall be made against any person until reasonable notice shall have been given to him of the charge of misconduct alleged against him and he shall have been allowed full opportunity to be heard in person or by counsel.

The statute does not require that the Commission shall *assign* Counsel to persons called to testify. The Commission is given a discretion to allow or refuse representation by Counsel where a witness "whose conduct is being investigated under this Act", asks permission to be so represented, up to the time when a charge is made against him in the course of the investigation. Where the Commission proposes to report against any person against whom a charge has been made, such person must first "have been allowed full opportunity to be heard in person or by counsel". In our conduct of the inquiry committed to us we followed these statutory provisions.

In some instances we considered it expedient, in the exercise of the discretion given us by the statute, not to accede immediately to the request of a witness for representation, although in most instances we did so upon the request being made.

By Order in Council P.C. 411, paragraph 3, it is proposed as follows:—

• That the said Commissioners may adopt such procedure and method as they may deem expedient for the conduct of such inquiry and may alter or change the same from time to time;

For reasons which appear in this Report we determined that the Inquiry should be held *in camera* and in order to effectuate the purpose which dictated that decision, at the beginning of the inquiry we required all persons concerned in the inquiry, including witnesses, to take an Oath of Secrecy as to their evidence. All counsel also were in accordance with the custom in such cases required to give their undertaking. This course was followed until in our opinion it was no longer necessary by reason of publication and it was then discontinued. At the same time that the Oath was required of any witness, who expressed any objection on the ground

that it would prevent his consulting with counsel in connection either with the inquiry before us or in any proceedings which might be later initiated concerning such person, or from testifying in such proceedings we gave to such witness a release for such purposes; and in every case where such objection was not made immediately, but a request for a release was later made, such release was given. Further, on the 20th March, 1946, we placed upon the record a general release in the following terms with respect to persons testifying before us and their Counsel:—

In any case where prosecutions may be had in relation to the subject matter of this inquiry the oath of secrecy taken by witnesses and the undertaking of counsel not to divulge to any person any of the evidence of which they were apprised touching the matters in question, nor any document or information coming to them touching the said matters shall cease to have effect to such extent as may be needed to ensure to any accused the exercise of the right of full answer and defence and to enable any witness to give evidence in any of such prosecutions.

Before parting with this phase of the matters before us, it may not be amiss to point out something which some of the witnesses evidently failed to appreciate, if one is to judge by the attitude of witnesses such as Poland and Rose, who refused to testify at all, and Halperin, who testified up to a point only and refused to answer further questions. These witnesses seemed to think that to be required to testify was opposed to some fancied right they regarded themselves as having. We did not think in the particular circumstances that our duty required us to insist on their answering or to impose sanctions for refusal. But we think that the utter absence in law of any basis for their attitude should be pointed out.

The Orders in Council to which we have referred, as well as *The Inquiries Act* and *The Official Secrets Act* and *The War Measures Act* are as much the law of the land as any other law, ancient or modern. While this is obvious, it was not apparently obvious enough to these persons. The enactment of the above statutes was exclusively a matter for Parliament. The provisions of the Orders in Council were equally a matter for the Executive acting under powers conferred by Parliament. Once enacted they are law.

As stated by Lord Haldane L.C. in *The Fort Frances* case (1923 A.C. 695 at p. 706):—

"No authority other than the central Government is in a position to deal with a problem which is essentially one of statesmanship."

The language of Lord Atkinson in *Rex v. Halliday*, 1917, A.C., 260, may also be referred to. He said at page 272:—

"It was also urged that this Defence of the Realm Consolidation Act of 1914, and the regulations made under it, deprived the subject of his rights under the several Habeas Corpus Acts. That is an entire misconception. The subject retains every right which those statutes confer upon him to have tested and determined in a Court of law, by means of a writ of Habeas Corpus, addressed to the person in whose custody he may be, the legality of the order or warrant by virtue of which he is given into or kept in that custody. If the Legislature chooses to enact that he can be deprived of his liberty and incarcerated or interned for certain things for which he could not have been heretofore incarcerated or interned, that enactment and the orders made under it, if intra vires, do not infringe upon the Habeas Corpus Acts in any way whatever, or take away any rights conferred by Magna Charta, for the simple reason that the Act and these Orders become part of the law of the land. If it were otherwise, then every statute and every intra vires rule or by-law having the force of law creating a new offence for which imprisonment could be inflicted would amount, pro tanto, to a repeal of the Habeas Corpus Acts or of Magna Charta quite as much as does this statute of November 27, 1914, and the regulations validly made under it."

Reference may be made also to an extract from the judgment of Lord Justice Scrutton in *Ronnfeldt v. Phillips*, 35 Times Law Reports, 46 at 37:—

"Very wide powers had been given to the Executive to act on suspicion in matters affecting the interests of the State. The responsibility for giving those powers rested not with the Judges but with the representatives of the people in Parliament."

"Salus populi suprema lex" is "a good maximum and the enforcement of that essential law gives no right of action to whomsoever may be injured by it" as was said by Darling J. in *Shipton's Case* (1915) 3 K.B. 676 at 684. The maxim finds expression in time of war in such measures as the Defence of Canada Regulations where personal liberty may be interfered with and the person detained on the order of a Minister of the Crown if of opinion

that the interests of the State require it. As has been said the State must, in such cases, act first and investigate afterwards. Meredith C. J. C. P. in *Re Beranek*, 33 O.L.R., 139, said at 141:—

“It is not a time when a prisoner is to have the benefit of the doubt; it is a time when, in all things great and small, the country must have every possible advantage; a time when it must be the general safety first in all things always; until the final victory is won; even though individuals may suffer meanwhile.”

The Official Secrets Act, 1939, is an expression of the same principle, and its provisions are not limited to a time of war. The author of the Introduction to Dicey's *Law of the Constitution*, 9th Edition, at page lxxii says:—

“... A system of law, which like the common law is based on the protection of individual rights, is not readily comparable with legislation which has for its object the welfare of the public, or a large section of it, as a whole. The common law rests upon an individualistic conception of society and lacks the means of enforcing public rights as such. The socialisation of the activities of the people has meant restriction of individual rights by the conferment of powers of a novel character upon governmental organs. But these powers are exercised by an authority which is unquestionably as lawful as that by which the courts impose control in their own sphere. So far as the provision of State social services and the regulation of economic conditions have become part of the accepted philosophy of government, the rule of law still means the supremacy of Parliament. It is only, where constitutional law is concerned, in that small but vital sphere where liberty of person and of speech are guarded that it means the rule of the common law. For here alone has Parliament seen fit to leave the law substantially unaltered and to leave the protection of the freedom of individuals to the operation of the common law. Even so there are many examples today of interference with liberty by statutes. The Official Secrets Acts, 1911 and 1920, are outstanding examples.”

Professor Dicey in the text at page 581 thus describes *The Official Secrets Acts* of the United Kingdom:—

“To ensure the safety of the State the Administration possesses ample powers under the Official Secrets Acts, 1911 and 1920, which

are primarily, but not exclusively, directed to the prevention of espionage and the wrongful communication of information calculated to prejudice the safety of the State if communicated to a potential enemy. These enactments are in fact framed in the widest terms to prevent the publication of any matter which is detrimental to the public interest. They contain some provisions which are capable of being used to stifle freedom of discussion. But abuse of these provisions is to some extent safeguarded by the requirement of consent to a prosecution by the Attorney-General. The avowed object of the Acts is not, of course, to control the liberty of the Press or to restrict discussion of matters of political interest, but to prevent the betrayal to a potential enemy of matters relating to national defence."

By reason of the fact that the circumstances brought to light by the disclosures made by Gouzenko are unprecedented in this country, it is not surprising that the provisions of *The Official Secrets Act, 1939*, are not well known. These circumstances have also demonstrated how necessary such legislation is when occasion demands.

3. EVIDENCE

In deciding on the evidence to be followed we had to consider whether or not we should receive either of the classes of evidence technically designated as "hearsay" and "secondary", a matter solely within our discretion, under the terms of paragraph 3 of Order in Council P.C. 411 above set out. There were many cogent reasons why we should receive and consider any evidence that could be made available, whether direct, hearsay, or secondary.

The situation which we have been called upon to investigate was an extraordinary one in many ways. The organization headed by Zabotin was actually working in the Russian Embassy, taking full advantage of the diplomatic privileges enjoyed by the diplomatic members, which it was obviously considered, made assurance from detection doubly sure, and gave a guarantee of additional secrecy. The members of the Embassy staff engaged in the spying activities were undoubtedly committing breaches of the Criminal Law of Canada, and if not immune, could be prosecuted for these breaches. They were engaged in criminal conspiracy with Canadian citizens and we were charged with the responsibility of ascertaining their identity. It was apparent that members of the staff of the Embassy could not be brought before us.

Other questions of the scope and effect of the immunity arose. For example, while *The Official Secrets Act* contains provisions for obtaining from telegraph and cable companies, originals and transcripts of telegrams, and that would in an ordinary case be done at once, in this case it would be inadvisable to do it, although many of the documents produced by Gouzenko were originals or transcripts of telegrams, and it was clear that many more had been exchanged. Had these been obtained from the companies a great deal more information would undoubtedly have come to light, provided of course the ciphered messages could be deciphered.

While there were at least five different codes being used by the different divisions of the Embassy, all messages were sent out by or received by it. Not only would it have been impossible to obtain production of any of these messages, because of diplomatic immunity, but if it had been possible it would have been necessary to try to decode them and that was something we felt should not be attempted.

On that side therefore we were prevented from making the investigation that would at once be made in any ordinary case. The extent to which we were thus hampered is obvious.

It was necessary, then, to consider how, handicapped at the outset, the situation could best be dealt with. In the first place we had the great advantage of having a relatively large number of secret documents, selected by Gouzenko with remarkable skill and judgment.

In addition Gouzenko was able to give information of great importance gained in the course of his work as cipher clerk to the Military Attaché, and in the course of conversation and discussions with other members of the staff of the Embassy.

The documents primarily recorded the activities of Zabotin's organization which he began to build up on his arrival in Ottawa in June, 1943, but did disclose important facts about earlier organizations which Zabotin took over, in whole or in part, and reorganized, and also some evidence of the existence of other rings.

The use of "cover names" created further difficulties. In some few cases both real and cover names appeared in the documents, in others where only "cover names" were used, Gouzenko was able to supply the real names, but there were "cover names" of persons whose real names Gouzenko did not know, and whom it was necessary to identify in some other way if at all possible. It was unfortunate that Gouzenko had, so far as he knew at that time, never seen a single Canadian agent. This

meant that he could not point to any person and say: "This is the person named as so-and-so in such-and-such a document."

It was evident also that we should have to investigate the conduct of at least one employee of the International Labour Office who also enjoyed diplomatic immunity and the documents indicated that the operations in Canada were linked with similar activities in other countries and the persons outside of Canada would not be subject to the subpoena of this Commission. The profound secrecy which cloaked the operations, and would have continued to cloak them but for Gouzenko's action, made it impossible to obtain direct evidence on many points. We realized that the admission of hearsay or secondary evidence might mean that conclusions would be come to about certain individuals which, while entirely sound and incontrovertible, might not be possible of proof in subsequent proceedings where the stricter rules of evidence were applied. But, after full consideration, we had no hesitation in deciding that all evidence available, direct, hearsay or secondary, should be considered by the Commission. In fact, if this were not done, it was doubtful whether the purposes of the Commission could be achieved. Regarded from the standpoint of the strict rules of evidence referred to above, the documents brought away by Gouzenko might not of themselves be admissible evidence in all cases, but in the circumstances in which they were prepared — where there was not the slightest contemplation that they would ever fall under the eye of any "unauthorized person" — the presumption in favour of their dependability was obvious. Earlier in this Report we had occasion to deal with the rules of evidence in cases of conspiracy and need not repeat here what we have already said. For this reason we decided to accept them, at the same time subjecting them to every test that other evidence made possible. In retrospect, it is remarkable the extent to which the contents of these documents have been substantiated.

It might be observed, too, that we were conducting an inquiry, and not trying an issue. Once we had decided the question of what evidence we would receive, the only question remaining was that of the weight to be given to it. An examination of the sections of this Report in which we deal with persons upon whom we report adversely will show the limited extent to which we rely exclusively on evidence other than direct evidence.

4. STATUS OF THE COMMISSION.

In this Section we have dealt with various matters with respect to which there would appear to have been misunderstanding on the part of some. There is one other matter upon which we think we should say something, namely, the status of a Royal Commission.

In the first place such a Commission is a primary institution, though of a temporary kind, and is upon a formal equality with the other institutions of the State such as the Courts, Houses of Parliament and Privy Council. Reference may be made to Clokie & Robinson "Royal Commissions of Inquiry" (1937) pp. 150, 151.

While it is sitting, and until its existence terminates, it is not subordinate to any body. It is independent in every sense. It is not subject to, or under the control of the Courts. Its function is to conduct the investigation committed to it and to make its report to the Governor in Council. Its report is not subject to review by any Court, nor is it subject to appeal.

The Commission's findings are as authoritative as those of any Court, and, as it is the sole judge of its own procedure, and may receive evidence of any kind in its discretion, it is sometimes in a better position than a Court subject to strict rules as to the admissibility of evidence, to ascertain facts.

In the present inquiry the Commission has had an advantage in that it had before it the full story, as far as it could be learned, of the widespread, but closely interlocked, secret organizations, something no court of criminal jurisdiction, trying individual persons or even small groups of persons could ever have.

The use to be made of its Reports when made was something over which the Commission had no control: but the fact that as a result of its Interim Reports, the proper authorities decided to prosecute certain persons reported upon, did not affect the Commission's duty to pursue the inquiry with which it was charged under the Order in Council by which it was established, namely, to:—

. . . inquire into and report upon which public officials and other persons in positions of trust or otherwise have communicated, directly or indirectly, secret and confidential information, the disclosure of which might be inimical to the safety and interests of Canada, to the agents of a Foreign Power and the facts relating to and the circumstances surrounding such communication.

In carrying out such duty the Commission is entitled to follow the process of logical reasoning, to draw inferences from facts and from the demeanour of witnesses, and to set out its conclusions and the facts as found by it in such a way that the weight of those conclusions may be examined.

There is, however, one power a Commission does not possess. That is the power to enforce its findings. If it makes findings upon which the proper authorities conclude that certain persons should be punished, those authorities must resort to the courts or tribunals which alone possess the power to punish. Whatever the view there taken, the findings of the Commission, arrived at under its own procedure, and on the evidence before it, are not affected and remain valid.

While it is sitting, and with its existence terminated, it is not subordinate to any body. It is independent in every sense. It is not subject to or under the control of the Court. Its function is to conduct the investigation committed to it and to make its report to the Governor in Council. Its report is not subject to review by any Court, nor is it subject to appeal.

The Commission's findings are as authoritative as those of any Court, and as it is the sole judge of its own procedure, and may receive evidence of any kind in its discretion, it is superior in a better position than a Court subject to strict rules as to the admissibility of evidence, to ascertain facts.

In the present inquiry the Commission has had an advantage in that it had before it the full story, as far as it could be learned, of the widespread but closely interlocked secret organisations, something no court of criminal jurisdiction trying individual persons or even small groups of persons could ever have.

The use to be made of its Reports when made was something over which the Commission had no control; but the fact that as a result of its former Reports the proper authorities decided to prosecute certain persons reported upon, did not affect the Commission's duty to pursue the inquiry with which it was charged under the Order in Council by which it was established, namely to:

to inquire into and report upon what public officials and other persons in positions of trust or otherwise have communicated directly or indirectly, secret and confidential information, the disclosure of which might be injurious to the safety and interests of Canada to the agents of a foreign Power and the facts relating to and the circumstances surrounding such communication.

SECTION XII

SUMMARY OF FINDINGS

I. We report that the following public officials and other persons in positions of trust or otherwise have communicated, directly or indirectly, secret and confidential information, the disclosure of which might be inimical to the safety and interests of Canada, to the agents of a foreign power:—

1. Eric Adams
2. J. Scotland Benning
3. Raymond Boyer
4. H. S. Gerson
5. Israel Halperin
6. David Gordon Lunan
7. Allan Nunn May
8. Edward W. Mazerall
9. Matt. S. Nightingale
10. F. W. Poland
11. David Shugar
12. Durnford P. Smith
13. Kathleen Mary Willsher
14. Emma Woikin

II. We report that we have been unable to identify the following persons named under "cover-names" in the documents and there definitely stated, to have been members of Zabotin's ring:—

"Galya"

"Gini"

"Golia"

["Green"]

"Surenson"

PF. 709568. BERNSTEIN
@ GREEN.

III. We also report the following facts relating to and the circumstances surrounding such communication:—

1. There exists in Canada a Fifth Column organized and directed by Russian agents in Canada and in Russia.
2. Within the Fifth Column there are several spy rings.

3. We have been able to identify many of the members of one of these rings, namely, that of which Colonel Zabotin was the head in Canada.
4. Membership in Communist organizations or a sympathy towards Communist ideologies was the primary force which caused these agents to agree to do the acts referred to in their individual cases.
5. The persons named in paragraph I were members of Colonel Zabotin's organization.
6. Without documents such as Gouzenko placed before us we cannot identify any non-Russian members of the other rings.
7. There was an organization whose duty it was to procure false Canadian passports and other citizenship documents for the use of agents engaged in Fifth Column activities, in Canada or elsewhere.
8. Zabotin and his assistants were helping to supervise and finance the work of an organization of agents operating in certain European countries. At least one person temporarily in Canada as an employee of the International Labour Office was a member of this organization, namely, Germina (Hermina) Rabinovitch.
9. Members of the staff of the Russian Embassy at Ottawa who were actively engaged in inadmissible espionage activities are named in Section II. 7.

IV. The following persons who may not come within the category of "*public officials and other persons in positions of trust or otherwise*" were members of Zabotin's organization and took an active part in recruiting agents, acting as contacts and securing and transmitting such secret and confidential information:—

Sam Carr
Fred Rose

V. Many of the persons named in paragraph I hereof were also actively engaged in the organization of "cells" from which agents were recruited, and in addition the following persons were organizers of such cells, or media of communication between espionage agents, or both:—

Agatha Chapman
Freda Linton
S. S. Burman
Henry Harris

VI. The following were active in procuring a false Canadian passport for a Russian agent who was operating in the United States:—

Sam Carr
Henry Harris
John Soboleff, M.D.
W. M. Pappin

VII. The following persons named in the documents did not so far as the evidence discloses take any active part in the subversive activities but would have done so if required:—

Norman Veall
Fred Chubb
Jack Isidor Gottheil

VIII. The names of certain other persons are mentioned in the documents merely because Moscow desired the names of all members of certain government staffs. Outside of those specifically named elsewhere in this Report, there is no necessity for these names to be mentioned.

IX. The names of certain other persons were mentioned in such a context that it was considered advisable to examine them and to investigate their activities. In each case we were satisfied that their conduct has been entirely proper and that while the Russians designed to draw some of them *into the net* in future, having in anticipation of doing so actually given them cover-names, such hopes were in our opinion completely without foundation and the objects of those hopes were unaware that they were being considered. Among these we refer to Col. Jenkins by name, because he has been mentioned by name in the public press.

X. The names of a number of persons, in Government service and otherwise, who were members of secret Communist cells have been disclosed by this Inquiry. These names appear in the volume of evidence. As there is no evidence that these persons were implicated in, or aware of, the espionage networks, we do not consider it necessary to mention these names in this Report.

SECTION XIII

RECOMMENDATIONS

We respectfully recommend:—

1. That, because of the introduction into the evidence, necessarily and unavoidably of secret technical data, the publication of which, according to the witnesses most concerned, would not be in the public interest at this time, none of the Evidence or Exhibits relating to any top secret, secret, restricted or confidential matters be published except with the approval of the Government in consultation with the Heads of the Services, Departments or Organizations concerned.
2. That the proper authorities in each Service, Department and Organization take such steps as may be considered desirable and effective, in the light of this Report and of the Evidence and Exhibits, to prevent further unauthorized transmission of information and to set up further safeguards.
3. That all security measures should be co-ordinated and rendered as uniform as possible.
4. That the Evidence and Exhibits accompanying this Report be placed before the proper persons in the various Services, Departments and Organizations affected, for study so that a complete evaluation of the information and material handed over can be made in each case to ascertain in detail what has, and what has not, been compromised. That consideration be given to whether the findings so made should be communicated to the proper authorities in the United Kingdom and the United States.
5. That *The Official Secrets Act*, 1939, be studied in the light of the information contained in this Report and in the Evidence and Exhibits, and, if it is thought advisable, that it be amended to provide additional safeguards.
6. That consideration be given to any additional security measures which would be practical to prevent the infiltration into positions of trust under the Government of persons likely to commit acts such as those described in this Report.

7. That the practice and procedure in connection with the issue of Canadian passports be revised. While not elsewhere referred to in this Report, we have had evidence indicating that naturalization and birth certificates have also been improperly obtained. We therefore suggest that the conditions surrounding the issue of these documents might be the subject of consideration by the proper authority.

1. That because of the introduction into the evidence, necessarily and unavoidably of secret technical data, the publication of which according to the witnesses most concerned, would not be in the public interest at this time, none of the Evidence or Exhibits relating to any top secret, secret, restricted or confidential matters be published except with the approval of the Government in consultation with the Heads of the Service Departments or Organizations concerned.

2. That the proper authorities in each Service Department and Organization take such steps as may be considered desirable and effective in the light of this Report and of the Evidence and Exhibits to prevent further unauthorized transmission of information and to set up further safeguards.

3. That all security measures should be co-ordinated and rendered as uniform as possible.

4. That the Evidence and Exhibits accompanying this Report be placed before the proper persons in the various Service Departments and Organizations selected for study so that a complete evaluation of the information and material handed over can be made in each case to ascertain in detail what has and what has not been compromised. That consideration be given to whether the findings so made should be communicated to the proper authorities in the United Kingdom and the United States.

5. That The Official Secrets Act, 1911, be studied in the light of the information contained in this Report and in the Evidence and Exhibits and if it is thought advisable, that it be amended to provide additional safeguards.

6. That consideration be given to any additional security measures which would be practical to prevent the infiltration into positions of trust under the Government of persons likely to commit acts such as those described in this Report.

SECTION XIV CONCLUSION

We have now completed the Inquiry directed by Order in Council P.C. 411.

We think, however, we should not close this Report without recording our appreciation of the work of the staff of the Commission and the Officers and men of The Royal Canadian Mounted Police who were detailed to assist us in the discharge of our duty.

The services rendered by Mr. W. K. Campbell as Clerk of the Commission are beyond all praise and his intelligent and devoted work did much to assist us in our task. When he had to leave to accompany Sir Lyman Duff to England Mr. J. H. Pepper worthily carried on in the manner followed by Mr. Campbell.

To the Chief Reporters, Mr. Featherston and Mr. Buskard, their assistants and staffs, we are also grateful. No matter how long or how late the Commission sat the transcript of each day's evidence was available to us next morning. This greatly facilitated our work.

The work done by The Royal Canadian Mounted Police was up to its usual extremely high standard, and we perhaps do not need to say more than that. But while it might be invidious to mention names, where all were so efficient, we feel that we should say that Inspector Leopold, who was in immediate charge of those assisting this Commission, rendered particularly valuable service.

The work of the Commission proceeded under great pressure, for a period literally day and night, to enable us to complete the Inquiry and to report in as short a time as was possible having regard to the magnitude of the task.

The extreme gravity of the situation disclosed by the documents brought by Gouzenko from the Russian Embassy as well as by his evidence and the other evidence, oral and documentary, placed before us, made it imperative that we should deal with all the many aspects of the matter in

this our Final Report. This accounts for the length of the Report, but we considered it of paramount importance that there should be available for all to read as complete an account as possible of the illegal activities which had already so seriously affected, and were designed even more seriously to affect, the safety and interests of Canada.

All of which is respectfully submitted.

Adrian Lam

Commissioner.

R. L. Keeloy

Commissioner.

APPENDIX A

FIRST INTERIM REPORT

FIRST INTERIM REPORT OF THE ROYAL COMMISSION TO THE
GOVERNOR GENERAL IN COUNCIL, MARCH 2, 1946

Ottawa, Ontario,
2nd March, 1946.

YOUR EXCELLENCY:—

Pursuant to Order in Council P.C. 411, dated the 5th day of February, 1946, we have been conducting the investigation thereby provided for, having commenced our sittings on Wednesday, the 13th day of February, 1946. We have now reached a stage in the hearing of evidence which permits us and renders it advisable for us to make an Interim Report.

The evidence establishes that a network of under-cover agents has been organized and developed for the purpose of obtaining secret and confidential information particularly from employees of departments and agencies of the Dominion Government and from an employee of the Office of the High Commissioner for the United Kingdom in Canada. The evidence reveals that these operations were carried on by certain members of the staff of the Soviet Embassy at Ottawa under direct instructions from Moscow. The person directly in charge of these operations was Colonel Zabotin, Military Attaché of the Embassy, who had as his active assistants in this work Lieutenant-Colonel Motinov, Chief Assistant Military Attaché, Lieutenant-Colonel Rogov, Assistant Military Attaché for Air, Major Sokolov, of the staff of the Commercial Counsellor of the Embassy, Lieutenant Angelov, one of the Secretaries of the Military Attaché as well as other members of the staff of the Military Attaché, all of whom, as well as the agents whom they employed in the pursuance of their activities, were, in the interests of secrecy, known by under-cover names. We have noticed that each of the dossiers compiled by the staff of the Military Attaché with respect to the Canadian agents contains this significant question: "Length of time in net." We think that the word "net" well describes the organization set up under development by Colonel Zabotin and his predecessor.

We have had before us a former employee of the Russian Embassy at Ottawa, Igor Gouzenko, the cipher clerk of the Military Attaché, who has described this organization and its functioning, and who has produced original documents, the authenticity of which we accept.

As shown by these documents, the specified tasks committed to Colonel Zabotin were the following:—

(1) As described in telegrams from "The Director" at Moscow addressed to Colonel Zabotin under his cover name of "Grant", in August, 1945.

(a) The technological processes and methods employed by Canadians and the English for the production of explosives and chemical materials.

(b) Instructions as to which of the Members of the Staff of the Military Attaché should contact particular Canadian agents and the suggestion of names of persons in the Department of National Defence for Naval Affairs who might act as agents.

- (c) Information as to the transfer of the American troops from Europe to the United States and the Pacific also the Army Headquarters of the 9th Army, the 3rd, 5th, 7th, 13th Army Corps, the 18th Armoured Division, the 2nd, 4th, 8th, 28th, 30th, 44th, 45th, 104th Infantry Divisions and the 13th Tank Division, together with the dates of their moves, the location of the Army Headquarters of the 8th and 16th Armoured Corps, the 29th and 89th Infantry Divisions, the 10th Tank Division and the location of the Brazilian Infantry Division. Whether or not there had been organized a staff for the American Troops in Germany and, if so, its location and the name of the Officer-in-Command.

The location of the 1st Parachute Troops and the plans for their future use.

- (d) Instructions to take measures to obtain particulars as to the materials of which the atomic bomb is composed, its technological process and drawings.
- (2) As described in writings under the hands of Zabotin, Motinov and Rogov, during the period March to August, 1945.
 - (a) To obtain from the National Research Council models of developed radar sets, photographs, technical data, periodic reports characterizing the radar work carried on by the Council and future developments planned by the Council.
 - (b) Particulars of the explosives establishment at Valcartier and its work, including the obtaining of formulas of explosives and samples.
 - (c) A full report on the organization and personnel of the National Research Council: "Give more details of organization of Research Council. Manipulate so as to get to their leaders and find out what they do."
 - (d) Particular work of specified employees of the Research Council.
 - (e) The obtaining of documents from the library of the National Research Council so that they might be photographed, with the expressed intention of ultimately obtaining the whole of the library of the National Research Council.
 - (f) Particulars as to the plant at Chalk River, Ontario, and the processing of uranium.
 - (g) The obtaining of a sample of uranium 235, with details as to the plant where it is produced.
 - (h) Specifications of the electro-projector of the "V" bomb.
 - (i) Research work being carried on with relation to explosive materials and artillery.
 - (j) The obtaining of material on the American aeroplane radar locator type, navigation periscope.
 - (k) A list of the Army Divisions of the Canadian Army which have returned from overseas and the names, or numbers, of the Divisions which have been divided, or re-shaped, or are undergoing re-shaping.
 - (l) The number of troops in the Canadian Army in the post-war period, together with the system of its organization.
 - (m) Information from the Department of Munitions and Supply of various kinds relating to guns, shells, small arms, ammunition for small arms, arsenals, optical and radio appliances, automobiles and tanks, apparatus for chemical warfare and particulars of plants producing same.
 - (n) Information as to electronic shells used by the American Navy.

- (o) To endeavour to keep agents in Government Departments threatened with discharge as a result of shrinkage in size of the Departments, in order to maintain their usefulness for the future.
- (p) Information with regard to depth bombs and double charge shells for cannon.
- (q) Information as to telegrams passing into and out of the Department of External Affairs and the Office of the High Commissioner for the United Kingdom.

It must not be assumed that the above list is exhaustive, but it illustrates the nature of the objective of these operations.

It has been stated to us by Commission Counsel that the method of presentation of the evidence before us is with the object of ultimately establishing the identity of the greatest number of those persons who have acted as agents, but the question of the relative importance of the above subject matters has not been dealt with to an extent where we are yet able to pronounce upon it. To proceed in any other manner might have been prejudicial to the ultimate attainment of the purposes of the investigation.

It has taken considerable time to hear the evidence relating to the general scheme of the operations being carried on, which evidence it was necessary to hear before dealing with the activities of particular agents. The evidence heard so far, however, establishes that four persons, namely,

Mrs. Emma Woikin
 Captain Gordon Lunan
 Edward Wilfred Mazerall
 Miss Kathleen Mary Willsher

all employees of the Dominion Government, except Kathleen Mary Willsher, who is an employee of the Government of the United Kingdom, have communicated directly or indirectly secret and confidential information to representatives of the U.S.S.R. in violation of the provisions of the *Official Secrets Act*, 1939, 3 Geo. VI, Cap. 49.

Emma Woikin

This person was employed as a cipher clerk in the Department of External Affairs, having taken the usual oath of secrecy required in such cases. Taking advantage of the position she occupied, she communicated to Major Sokolov the contents of secret telegrams to which she had access in the course of her duties.

Captain Gordon Lunan

This man, a Captain in the Canadian Army, on loan to the Wartime Information Board, now the Canadian Information Service, was the head of a group of agents acting under the personal direction of Lieutenant-Colonel Rogov. In the course of his own particular duties with the Information Board, no secret information came to him, but he was the intermediary through whom the information furnished by the group reached Rogov, which information was, in our opinion, furnished and transmitted in violation of the statutory provisions already referred to. The members of the group headed by Lunan were scientists employed by the National Research Council and the Department of National Defence, Research Division, and their concern under Lunan, was to obtain for Rogov information on technical matters in connection with the work of those agencies. Some of the information obtained and transmitted to Rogov related to the latest developments in radar. Through this group also secret documents in the library of the National Research Council were handed over.

Edward Wilfred Mazerall

He is an electrical engineer in the National Research Council working in the field of radar, who also had taken an oath of secrecy. He was one of the group headed by Lunan and he furnished to the latter on one occasion, for transmission by the latter, two reports of the National Research Council on certain developments, actual and projected, in the field of radar, at a time when the disclosure of these documents was still unauthorized. The fact that these reports were shortly thereafter presented to the Third Commonwealth and Empire Conference on Radio for Civil Aviation should be considered as an extenuating circumstance in Mazerall's favour.

Kathleen Mary Willsher

She was employed in the Office of the High Commissioner for the United Kingdom as Deputy Registrar, having subscribed to a document in which she acknowledged having read the Official Secrets Act of the United Kingdom. She had access to practically all secret documents in that office and made disclosure of the contents of some secret documents from that office.

In our final report we shall deal more fully with the evidence and our findings with regard to the above named persons. Each of these persons has given evidence before us and has admitted the substance of the above. To each, in accordance with the provisions of Sections 12 and 13 of *The Inquiries Act*, R.S.C., cap. 99, an opportunity was given to have counsel, but none desired to be represented by counsel or to adduce any evidence in addition to his or her own testimony.

We propose from time to time, as circumstances permit, to make further interim reports before reporting finally. We are reporting now with regard to the above named persons as we have concluded our investigation as to their part in the activities mentioned, and we have been assured by Commission Counsel that they have no further evidence to offer which can affect the opinion we have formed on the evidence regarding these persons.

As already pointed out, we have been able to review the complete activities of four only of the agents used by the officers of the Soviet Embassy. The evidence indicates that, in addition, many other agents were active and that information more intrinsically important has been disclosed. We are not, however, as yet in a position to report with regard thereto, as the evidence has not been fully developed.

Respectfully submitted,

(Sgd.) ROBERT TASCHEREAU,
Royal Commissioner.

(Sgd.) R. L. KELLOCK,
Royal Commissioner.

His Excellency,
The Governor General in Council,
Parliament Buildings,
Ottawa.

APPENDIX B

SECOND INTERIM REPORT

SECOND INTERIM REPORT OF THE ROYAL COMMISSION TO THE
GOVERNOR GENERAL IN COUNCIL MARCH 14, 1946

(Made Public March 15, 1946)

Ottawa, Ontario,
14th March, 1946.

YOUR EXCELLENCY:—

Re: *Order in Council P.C. 411*

Since the date of our interim report of the 28th of February last, we have heard a great deal of evidence without as yet having been able to hear all the witnesses whom it will be necessary to hear to complete the investigation with which we have been charged. Forty-eight witnesses have been heard in some forty-four different sittings of evidence which affects an additional number of persons concerning whom we now report.

Dr. Raymond Boyer, Assistant Professor of Chemistry at McGill University, was, since 1940, under an oath of secrecy, engaged in secret research on explosives under the National Research Council, the most important part of which concerned the making, by a process different from that previously employed anywhere else, of the explosive known as R.D.X. While so engaged, Dr. Boyer was secretary of a sub-committee of the Associate Committee on Explosives of the National Research Council, which was directly charged with the project. This sub-committee was at first called the Research sub-committee and later the Research and Development sub-committee.

This project, carried on between the years 1940 and 1945, was successful and resulted in the building of a substantial plant in Canada where the product was manufactured in substantial quantities. Large quantities were also manufactured in the United States.

All the reports on the progress of this project were secret reports prepared for the National Research Council and they are still secret, their distribution being limited to a comparatively few persons. Most of these reports were written by Dr. Boyer himself.

His name, and the fact that he had disclosed information with regard to this secret project, appear in documents in the Russian Embassy produced before us by the witness Gouzenko. We have now heard Dr. Boyer and he has told us that commencing early in 1943, and continuing into 1944, he gave, for transmission to the Soviet Union, full information with regard to his work which he himself admits was secret. He said that with this information competent persons would be in a position to design a plant to produce the material in quantity.

Harold Samuel Gerson was employed from January, 1941, to July, 1944, by Allied War Supplies, Limited, a Crown Company incorporated to supervise the construction of facilities for the production of chemicals and explosives, and later the production of these materials. Gerson was assistant to the head of the production control department. Following this Gerson was employed by the Department of Munitions and Supply until in or about November, 1945, when he became an employee of the War Assets

Corporation, also a Crown Company. In the Department of Munitions and Supply he was Secretary and Chief of the Records Division of the Ammunition Production Branch. While still with Allied War Supplies, Limited, he was on loan to the Department of Munitions and Supply on occasion and, after going to War Assets Corporation, had still some duties to perform in the Department. In connection with all of these positions he was under an oath of secrecy.

In the notebook of Colonel Zabolin there is a page which reads in part:—

"GRAY . . . chief of the branch of the Directorate for procuring war material for the allies. Taken to work on 1.9.42. Works well. Gives material on shells and cannon on photos."

"GRAY" is the cover name used by the Embassy for Gerson. The material Gerson supplied was not, however, later on limited to photos.

Gouzenko also produced a document from the Embassy in the handwriting of Gerson, as he admits to be a fact, which is a copy of part of a report dealing with the testing of certain projectiles in England by the United Kingdom authorities. These reports were sent regularly to the Canadian authorities from England and were secret documents.

In a telegram of August 25, 1945, from Colonel Zabolin to "The Director" in Moscow it is stated:—

"GRAY was earlier given the task of taking all necessary measures for staying on his old job. At the last contact the latter stated that in the near future great reductions will begin. In the event that it will be impossible to remain on the old job GRAY proposes to form a geological-engineering consultative office in Ottawa. GRAY is a geological engineer by profession and therefore can head this office. The expenses for organizing the office are as follows: rent of premises 600 dollars a year; wages for one clerk, \$1,200 a year; office equipment, \$1,000; payment of GRAY as director—\$4,200 a year; altogether it needs \$7,000 dollars a year. GRAY said that Canada is entering a 'boom' period in the mining industry and it is therefore very likely that within two years the office will be in a position to support itself. The initial expenditure of its operation will be returned in the future.

GRAY thinks that it is necessary to begin establishing the office gradually, that is, prior to his completion of the work at the old place. I beg to get your decision."

In August, 1945, reductions in staff of the Department of Munitions and Supply were being made on an increasing scale and Gerson did discuss with his superior staying on in the Government service. He is an M.Sc. in geology of McGill University and contemplated going into private practice if he could not remain in the Civil Service. The figures mentioned in the telegram, he admits, constitute expenses he would incur in setting up private practice, \$4,200 being his then salary in the Department. Gerson's continuance in the public service was evidently desirable to the U.S.S.R. so as to ensure the continuance of the flow of information from him.

In a further telegram from Moscow, "The Director" telegraphed Colonel Zabolin as follows:—

"In the mail of 23.8.1944 were received from you GRAY's two materials, the monthly reports on the research of technological questions in the field of production of war materials. On the basis of short and unrelated data it is impossible to judge the method and work of the Canadian and English production of explosives, powders and chemical materials. It is therefore desirable to obtain the following information:

1. The method and technological process of the production of munitions, explosives. 2. The formula for plastic explosives, the production of T.H. and H.S. (their composition, purpose and specific qualities). 3. The application of picrite and nitro-guanidine. 4. The technique of producing the capsules of detonators and igniting capsules. Wire to whom do you consider it possible to give the said task. If BACON still keeps on working in the Artillery Committee, this task should be handed over to him."

Colonel Zabotin replied to this telegram as follows:—

"(1) The tasks will be detailed to GRAY, BACON and the PROFESSOR through DEBOUZ. The PROFESSOR is still on duty away from home. DEBOUZ will meet at the end of the month.

(2) MARTIN received reply from DEKANOZOV with permission to return home. As a result of MARTIN's work at the San Francisco Conference and his sickness about a month, the latter was unable to write all his reports on your task. The question of the current situation in Canada after the elections and the interruption of the class forces in the country, he will write at our place and we will send them to you by courier, while the remaining questions of the task he will write at the centre."

The "PROFESSOR" was the cover name for Dr. Boyer. "BACON" was the cover name for one of the persons detained whom we have not as yet been able to hear, while "DEBOUZ" is the cover name for the intermediary who obtained the information, already referred to, given by Dr. Boyer. "MARTIN" was the cover name of Zheivinov, the head of the Tass agency in Ottawa.

Another telegram from Zabotin to "The Director", bearing date 28.4.44, reads in part as follows:—

"GRAY's wife has relatives in Bukovina and Bucharest. Apart from the relatives she has many acquaintances among doctors and other specialists. Recently GRAY handed DAVIE a reply of the Canadian Red Cross of March, 1942, wherein it is announced that the relatives of GRAY's wife are in their own places, that is in Roumania. GRAY's wife, through GRAY, asks advice as to whether it is possible to send them money or other things.

DAVIE replied that this was a complicated and difficult question, and that he could not promise anything. He suggested he be furnished with addresses and letters from GRAY's wife for these acquaintances. In the letters it could be proposed (that is through GRAY's wife—he will agree to that) that they contact the man who delivers the letter. If you agree to such an idea we shall receive the addresses and letters from the wife of GRAY. Roofs of the doctor and other specialists."

"DAVIE" is the cover name of Major Sokolov. "Roofs" is a cover expression indicating secret activities. Gerson's wife, or her family, he has told us, did receive a letter from the Canadian Red Cross in reply to inquiries made regarding relatives in Europe. The telegram indicates that Mrs. Gerson's acquaintances among professional people in Bukovina and Bucharest might be employed to receive and transmit letters in secret.

Another document produced before us by Gouzenko shows that correspondence on one single subject handed over by Gerson amounted to one hundred and fifty pages.

On all the evidence, including certain admissions made by Gerson himself, it is clearly established that the latter has communicated, over a considerable period, secret information to the representatives of the Soviet Union in violation of the *Official Secrets Act* and we so report.

Squadron Leader Matt Simons Nightingale attended Military School in Mobile, Alabama, and graduated from McGill University in 1928 with the degree of B.Sc. in engineering. He also attended a private course at the same institution on transmission and engineering telephone work, and later was employed as a draughtsman with the Northern Electric Co., a company manufacturing telephone equipment.

In 1928 he joined the Bell Telephone Co. of Canada as telephone transmission engineer, where he remained until 1942, when he enlisted in the R.C.A.F. and was posted to the Branch Land Lines, Technical Section, until the early months of 1945 when he returned to the Bell Telephone Co. of Canada on his discharge.

While in this special branch of the R.C.A.F. he was mainly concerned with land lines communication on both the east and west coasts and also worked on the Gander project, which embodies one of the main systems of communication on the east coast. He acknowledged the secret nature of the duties entrusted to him throughout.

The original telegrams from the Russian Embassy to Moscow give, as to Squadron Leader Nightingale, known in these telegrams under the cover name of "LEADER", items which he admitted having supplied, to wit, his photograph and information as to the nature of his experience with the Bell Telephone Co. and the R.C.A.F. One document from the Embassy reads in part as follows:—

"Squadron Leader

Mat Nantingale, 155 O'Connor St., Apt. 1, Telephone 2-4545. SAM is known to to him as WALTER. The first meeting took place 19.12.44 at 21 o'clock at the house.

Possibilities: 1. Network of Aerodromes in the country (both coasts).

2. Map of the coast.

Prior to the war he worked with the Bell Telephone Co. On 21.1.45 he advised BRENT about his demobilization. He is going to the Bell Company. Next contact on 24.2.45 at 20.30 at the corner of Elgin-Macleod Sts. At the contact on 24.2.45 he gave the address Montreal, 1671 Sherbrooke 57 (51). Telephone 1.1684. Next contact 24.3.45 at 20.30 Metcalfe-Somerset. He will give the coast (RAF) and listening-in on the telephone.

Task—1. Recruiting (call-up).

2. Materials of the company.

3. DUBOX—GINI—how."

"BRENT" is the cover name for Lieutenant-Colonel Rogov. "DUBOX" means a hiding place. "GINI" is a cover name for an individual.

Heard as a witness, Nightingale said that after meeting Lieutenant-Colonel Rogov by accident on a train between Ottawa and Montreal he had several meetings with Rogov at his own apartment and on the street in Ottawa and Montreal and in Rogov's room in Montreal on one occasion. In these conversations he says various subjects were referred to in a general way amongst which were the following, namely, listening-in telephonic devices, linking up of airports, land lines communications, network and location of aerodromes, maps of the R.C.A.F., possibly, the Gander project, some of which matters were of a secret nature.

His interview with Rogov, his explanation of those interviews which we are unable to accept, his association with other persons involved in the matter which is the subject of the present investigation, the references to him in the documents found in the Russian Embassy, as well as the fact that documents of a secret nature belonging to the R.C.A.F. which he should not have retained were found in his possession after his

discharge, suggest to us that, if he did not in fact give to the U.S.S.R. secret and confidential information, he may very well have conspired to furnish such information. Furthermore, his unauthorized retention of the above mentioned documents would appear to have been in violation of the provisions of the *Official Secrets Act*.

Dr. David Shugar is a Ph.D. in physics, McGill University, having been born in Poland in 1915. From January, 1941, until February, 1944, he was employed at Research Enterprises, Limited, Toronto, when he entered the Navy, becoming a Lieutenant in the Directorate of Electrical Supply. He remained in the Navy until his discharge January 31, 1946. Subsequently he was employed in the Department of Health and Welfare. While in the Navy, Shugar was engaged in research with respect to certain equipment used in anti-submarine detection. In the course of his duties he had to visit various naval establishments, including laboratories, in Canada, the United States and the United Kingdom.

Although Gouzenko had never seen him, he knew who Shugar was and the work in which he was employed. In a document produced by Gouzenko headed "Assignment No. 1, SAM to SHUGAR" outlining information desired from Shugar, seven subjects of inquiry relating to anti-submarine detection are laid down, all of which information, Shugar has told us, was either in his possession in connection with his work, or accessible to him at Naval Headquarters.

In a later document headed "Task No. 2" assigned to the same agent, the following item appears:—

"Communicate how the matter stands of the former assignment for Lieutenant Shugar."

The answer made by the agent to Rogov is indicated by what Rogov wrote on the document against the above item, namely,

"At the present time he is working maritime staff. He has consented to work for us but with special caution. He has been under observation."

SHUGAR admitted having met the agent to whom we have referred above on at least three occasions, and that the agent was inquisitive.

A telegram from Colonel Zabotin to Moscow, No. 232, reads in part as follows:—

"We have agreed with SAM about the transfer of connections to us with PROMETHEUS. The latter is at present in Florida. The transfer will take place in the town of SAM. I consider it expedient to give BRENT the connection with PROMETHEUS. SAM promised to give us several officers from central headquarters of the active forces. At the present time it is fairly difficult to do this, as changes in the staffs are taking place by officers returning from overseas."

"PROMETHEUS" is the cover name used to denote Shugar and "BRENT" was Rogov. In reply the "Director" telegraphed to Zabotin:—

"To Grant,

Your telegram 232

(1) In my telegram of 19.7, I have advised that until the information is received from PROMETHEUS and until his possibilities in the Navy Department are established, contact with him should be maintained through FRANK. Should it prove that PROMETHEUS is a truly valuable man to us, direct contact may then be established with him. However, it is not desirable to entrust BRENT with making the contact. If you should find no objection, it is better to let CHESTER make this contact. Have

in mind that we have here almost no other information on PROMETHEUS except his family name and his place of employment.

Wire in full his name and family name, his position in the Navy Department and the address of his residence. Collect the remaining data and send by mail.

(2) As for obtaining persons from the said departmental services, we are interested. Let FRANK, after the staffs have been set up, recommend one or two candidates for our consideration."

"CHESTER" was the cover name for Captain Gorshkov who acted as chauffeur for the Soviet Military Attaché in Ottawa.

Shugar denies having given, or having agreed to give any secret information, but has no explanation for the existence, in the documents above referred to, of the references to himself. We were not impressed by the demeanour of Shugar, or by his denials, which we do not accept. In our view we think he knows more than he was prepared to disclose. Therefore, there would seem to be no answer on the evidence before us, to a charge of conspiring to communicate secret information to an agent of the U.S.S.R.

These four persons are or were all government officials, or persons holding positions of trust. All have been heard before us as witnesses and, in accordance with Sections 12 and 13 of *The Inquiries Act*, Cap. 99, R.S.C. 1927, have been offered the opportunity of having counsel. Two of them declined and two others, after consultation with counsel, stated that they did not wish to call evidence or to have representations made to the Commission by counsel on their behalf. Accordingly we have been free to report with regard to them as above.

We may also point out that under Order in Council P.C. 411, which is our authority for the present inquiry we are required to report not only "upon which public officials and other persons in trust or otherwise have communicated, directly or indirectly, secret and confidential information", but also upon "the facts relating to and the circumstances surrounding such communications".

The evidence discloses that one of these circumstances is that other Canadians, who are not government officials, have been the intermediaries through whom secret and confidential information has reached the Russian Embassy, as in the case of Dr. Raymond Boyer. As the evidence develops, we shall be in a better position to deal with these intermediaries at a later stage.

In conclusion, we may add that we regret not having been able to complete as yet the hearing of evidence with regard to the five other persons who are detained under the provisions of Order in Council P.C. 6444, passed on October 6, 1945, but we hope that we will be able to do so shortly. On February 14 last we concurred in the advice given by counsel for the Commission to the Honourable the Minister of Justice that certain named persons should be detained, and we did so because of the serious nature of the disclosures then indicated by the evidence we had heard, and the fact that cover names of persons who had not been identified appeared in the evidence which indicated that the ramifications of the disloyal practices and the persons engaged therein might be even greater than then appeared and might well be continuing. In effect the matters with which the inquiry was concerned appeared to us to be of so serious a nature from the national standpoint that we believed the course advised by counsel should be pursued in the exceptional circumstances existing. The further evidence which we have heard has not caused us to change this view but, on the contrary, has confirmed it.

In a case of this nature where the evidence has revealed the existence of an organization constituting at least a threat to the safety and interests of the state, as evidenced by the fact that some witnesses holding strategic positions have made the significant statement under oath that they had a loyalty which took priority over the loyalty owed by them to their own country, and for that reason they acted as they did, and would unquestionably have continued so to act had they not been detected, we are of opinion that should these persons be allowed communication with outsiders or between themselves until their activities have been fully investigated, some of the basic purposes of this inquiry would be entirely defeated.

Respectfully submitted,

(Sgd.) ROBERT TASCHEREAU,
Royal Commissioner.

(Sgd.) R. L. KELLOCK,
Royal Commissioner.

His Excellency,
The Governor General in Council,
OTTAWA.

APPENDIX C

THIRD INTERIM REPORT

THIRD INTERIM REPORT OF THE ROYAL COMMISSION TO THE GOVERNOR IN COUNCIL

(Made public March 29, 1946)

OTTAWA, Ontario,
March 29th, 1946.

YOUR EXCELLENCY:—

Re: *Order in Council P.C. 411*

We desire further to report as follows:—

Eric Adams entered McGill University in 1925, graduated in engineering in 1929, and obtained the degree of Master of Business Administration at Harvard in 1931. His first employment was with the advertising agency of Cockfield, Brown and Company, of Montreal. In 1934 he made, as a tourist, an extended trip to Russia, and, after having occupied several positions in Canada, in 1936 he went to the United States for three years, where he was employed as an engineer with Coverdale and Colpitts in New York. In 1940 he joined the Wartime Requirements Board, in 1941 the Foreign Exchange Control Board, in 1944 the Bank of Canada, all in Ottawa, and in 1945 the Industrial Development Bank with residence in Montreal. While occupying these various positions of trust, he was a member of several committees and secretary of the Main Examining Committee of the Inventions Board during the war.

Documents coming from the Russian Embassy show that Eric Adams was known under the cover name of "ERNST". He is referred to as follows in a document written in Colonel Zabotin's handwriting:—

"He gives detailed information about all kinds of industries, plans for the future. Supplies detailed accounts of sessions. Gives materials daily. Good worker.

He is connected with Foster. Both live in Ottawa. Taken to work at the end of January."

In a mailing list sent by Zabotin to Moscow on the 5th of January, 1945, he is credited with having furnished the following information:—

Name		Material	Date
ERNST	Review	Despatch of Munitions to England	November
"	"	"	"
"	"	"	"
"	"	"	"
"	"	"	"
"	"	Central Branch	July-September
"	Copy	Invention of Waterproofing (Page 5 of original)	8-12-44
"	Manuscript	Notes on the conference	20-12-44
"	Copy	Central Branch	Sept.-October
"	"	Unloading of m. stor. for month of November	14-12-44

Name		Material	Date
ERNST	Copy	Report of 24-11-44	24-11-44
"	"	Inspection Br.	2-12-44
"	"	Inspection Br.	28-11-44
"	"	Inspection Br.	2-12-44
"	"	Correspondence about contracts	12-12-44
"	"	Correspondence with companies	December
"	"	Corrections	"
"	"	Correspondence with companies	"
"	"	"	"
"	"	"	"
"	"	"	"
"	"	"	"
"	"	"	"
"	"	"	"
"	"	(Page 6 of original)	"
"	"	Enquiries	"
"	"	"	"
"	"	Correspondence	"

the whole comprising a total of 203 pages.

This list cannot be considered as exhaustive of the information furnished by him, for he appears to have been quite active while in Ottawa, and also after the 1st of January, 1945, when he joined the Industrial Development Bank in Montreal. Miss Willsher has stated before us, very frankly we think, that he asked information about her work at the British High Commissioner's Office, which she gave, not only while he was in Ottawa, in 1942 and 1943 and 1944, but also in 1945.

For that purpose he made special trips to Ottawa in 1945, the contacts being arranged through an intermediary, and the meetings taking place at pre-arranged places, or in his automobile when the information was given. In one instance Adams gave Miss Willsher \$25.00 for the purpose of going to Montreal.

Adams has been called by Miss Willsher the leader of an Ottawa group, and it was to him naturally that the information should be given,—

"in the interest of the Communist Party"

when they met with others of the group to discuss the—"theory and practice of socialism and communism and the party program." These meetings were the occasions when she would convey information to Adams.

When confronted with the evidence given by Miss Willsher, Adams gave evasive answers, stating that his questions had been misconstrued by Miss Willsher. He professed throughout his evidence to having a poor memory and attributed to it his hesitancy in answering very many questions. He made no clear denial of the evidence given by Miss Willsher, taking refuge in his professed view that she had misinterpreted the situation.

Adams' conduct and associations with Soviet agents, his personal sympathies dating back at least to 1935 which made him easily receptive to the suggestions of Messrs. Zabolin and Rogov, his endeavours to obtain information of a secret nature, which turned out in many instances to be fruitful, as evidenced by the testimony of Miss Willsher, and the documents from the Embassy, leave little doubt in our minds that he

has conspired to commit offences in violation of the *Official Secrets Act*, and that he has also committed the substantive offences of obtaining for the benefit of a foreign power, secret information, and of inciting others to commit such offence.

Israel Halperin, of Russian descent, was born in 1911. He is 35 years old and is a professor of mathematics at Queens University, Kingston, Ontario.

At the Russian Embassy, he was known as "BACON", and formed part of the group which was to operate under the direction of Captain Gordon Lunan. In the original assignment given to Lunan by Lieutenant-Colonel Rogov, it was Lunan's duty to obtain from Halperin information concerning "Valcartier" and "the formulas of explosives and samples".

Halperin joined the army in 1942. In 1943 he was attached to the Directorate of artillery, became a Captain in 1944 and a Major in 1945. In that branch of the army, he worked on a considerable number of secret projects, some of which were so important that they were known, even amongst the few who were aware of them, under code names. In his position he had access to all the files and documents concerning explosives and weapons and all the new discoveries made available to the artillery.

Lunan contacted Halperin several times and reported in writing to the Embassy the results of his conversations. At first, according to Lunan, Halperin did not seem sufficiently impressed with the "conspiratorial" nature of the work, but later gave the information asked for including information on the Canadian Army Research and Development Establishment, called C.A.R.D.E. and the various plants and laboratories that would be operated by this organization. This included information about the Pilot Explosive Plant, the Ballistics Laboratory, the Designs Branch and the Field Trials Wing. He emphasized the work done at the Ballistics Laboratory, with particulars as to new explosives. This latter information conveyed to Lunan by Halperin was of a highly secret nature.

Another assignment given to Lunan by the Russian organization was to obtain information through Halperin on the "electro-projector", which was at that time a fuse newly developed by British and Canadian scientists and manufactured by the Americans. Halperin promised to comply with the request made to him, and later informed Lunan of the existence of this new projectile and the general principles of its operation. This device, developed by co-operation between the United Kingdom, the United States and Canada, was one of the most devastating projectiles used in the Japanese war, and is of such a secret nature that we have been asked by the military authorities not to report with more particularity than as above.

Halperin had associations with other persons involved in the agency organization. He was known to many of them and kept in a pocket book the telephone numbers of Adams, Boyer, Nightingale, Rose, Shugar and Poland. When Lunan received his first assignment to contact Halperin he did not know him, but it is a significant fact that, on the document written by Rogov, Halperin's name appeared—he was already known at the Embassy.

When Halperin appeared before the Commission, assisted by Counsel, full opportunity was given him to explain all this direct and circumstantial evidence against him, but his refusal to furnish any explanation and his general demeanour, fully convince us that he violated the *Official Secrets Act* on more than one occasion.

Durnford Smith is a member of the microwave section of the Radio Branch of the National Research Council. He is an honour graduate of McGill University in mathematics and physics and holds his Master's degree obtained for work in connection with radio-activity. In 1936 he applied for a post in the National Research Council, but not until 1942 was he finally successful in obtaining a temporary position as Junior Research Engineer in the radio laboratory. On January 12, 1946, he was engaged for a three year term. Before entering the employ of the National Research Council he was with the Bell Telephone Company for some five years. His work in the Council was secret and on his appointment he took the usual oath of secrecy.

Smith, as the evidence shows, was one of the group of agents reporting through Lunan to Lieutenant-Colonel Rogov. He was referred to in the Embassy records under the cover name of "BADEAU". In July, 1945, he was brought into direct contact with Rogov. Smith did not admit participation, but a great deal of the evidence he would not deny. From the Embassy two documents, one of them containing notes, formulae and drawings, established to be in the handwriting of Smith, were produced by Gouzenko. The handwriting of these, Smith says, is "like" his. He had no explanation for the presence of the documents in the Embassy. He himself furnished to the Embassy his picture and biographical material for its dossier on him.

Certain definite tasks were assigned to Smith from time to time. As an example, on August 6, 1945, the following memorandum was given to him:—

"ASSIGNMENT FOR BADEAU, NUMBER 3

Given through Back 6-8-45

Obtain the following literature for photographing: GL 14003, Som. 14032, A.S.V. 14040,B and N.S. 13960.

NOTE: If the special material is bulky or if it is not convenient to take such a number of books, then the given number can be reduced at your discretion, but everything must be very careful.

P.S. After reading burn."

The numbers are the numbers of secret documents in the Radio Branch of the National Research Council.

Between August 8th and 22nd, Smith drew from this library ten documents and he had previously drawn fifteen others. All of these remained in his possession till after August 26th. Included in those drawn by him on August 20th were Nos. 14003 and 14032.

Colonel Rogov's notebook contains the following entry:—

"3. 25-8-45 Regular (meeting), everything normal. Handed over a large quantity of radio literature and various reports, all told about ten books. He gave notice that he was going on a two-weeks' vacation. Was given the assignment on radio material and other things. (See assignment No. 4). The meeting to return the material will be on 26-8-45 on the corner of Osgoode and Cumberland at 22.00".

There was an awful rain. He came, however, gave notice that in future he would not come during such kind of weather—not naturally.

The evidence shows that on the evening of August 25th, the heaviest rain of the month occurred; Smith himself admits that at that date he was looking forward to his vacation shortly thereafter.

On August 27th, Zabotin wired the "DIRECTOR" in Moscow as follows:—

"We have received from BADEAU 17 absolutely secret and secret documents (British, American and Canadian) on the question of magnet, radio-locators for field artillery, three secret scientific research journals of 1945. Altogether about 700 pages. In the course of the day we were able to photograph all the documents with the help of the Leica and the photofilter. In the next few days we will receive almost the same amount of documents for 3 to 5 hours and with one film we will not be able to do it. I consider it necessary to examine the whole of the library of the Scientific Research Council.

Your silence on My No. 256 may disrupt our work on photographing the materials. All materials have been sent by mail in turn."

The Embassy records show that these documents were returned to Smith on August 26th.

The "library of the Scientific Research Council" mentioned in the above telegram, is not, as may well be imagined, the library of that body which is open to members of the public, but the library of secret documents kept in the various branches of the Council and notably in the Radio Branch.

We are satisfied on all the evidence, documentary and otherwise, including the evidence of Lunan and Mazerall, as well as the evidence of Smith himself, that Smith was an active agent of the Embassy.

J. S. Benning became an employee of the Department of Munitions and Supply in July, 1942, and was placed in the Ammunition Production Branch. Prior to that for a short time he had been with Allied War Supplies Corporation, a Crown company. In both these positions he took an oath of secrecy. Later in his employment he was transferred to the Economics and Statistics Branch of the Department. In April, 1945, he went to the Department of Reconstruction where he became Assistant Secretary and later Secretary of the Depreciation Committee. While in the Department of Munitions and Supply he was Joint Secretary of the Canadian Munitions Assignment Committee.

On the mailing list for one day, January 5, 1945, which details documents mailed by the Embassy to Moscow on that day, "FOSTER" is credited as being the source of supply of seventy separate documents. It has not been possible to identify each of these documents from the descriptions given in the mailing list but more than half of this material may be identified either in particular or generally. The evidence establishes that Benning, whose cover name, according to Gouzenko, was "FOSTER", had to do with this material in connection with his work or was in a position where it was possible for him to have access to such material either by himself or through Gerson, who was his brother-in-law.

Three items on the mailing list may be referred to:—

No.	Name	Material	Date
155	FOSTER	North Amer. Comm. of Coordin.	Report of 23.11.44
156	FOSTER	D.M. and S.	Report of 24.11.44
157	FOSTER	North Amer. Committee	Notes and Report 23.11.44"